LINMAR PETROLEUM CO.

IBLA 91-6 Decided May 6, 1992

Appeal from a decision of the Deputy to the Assistant Secretary - Indian Affairs (Operations), Bureau of Indian Affairs, denying an appeal of a Royalty Management Program, Minerals Management Service, assessment levied for late reporting of royalties. MMS-90-0182-IND.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Civil Penalties--Indians: Mineral Resources: Oil and Gas: Generally--Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Royalties: Generally

   Assessments for the late reporting of royalties pursuant to 30 CFR 218.40 are properly distinguished from penalties assessed under sec. 109 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1719 (1988), and do not effectively increase the royalty rate designated in an oil and gas lease.

2. Federal Oil and Gas Royalty Management Act of 1982: Civil Penalties--Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Royalties: Generally

   By choosing the method of delivery of its report of sales and royalty remittance (Form MMS-2014), the
   payor must accept the responsibility for and bear the consequences of that choice, including the possibility of delay in delivery or nondelivery of the report.

3. Indians: Mineral Resources: Oil and Gas: Generally--Oil and Gas Leases: Civil Assessments and Penalties

   An assessment of $10 per report for the late reporting of royalty on production pursuant to 30 CFR 218.40 will be affirmed where 30 CFR 210.52 requires the filing of a completed Form MMS-2014 by the end of the month following the production month and it appears from the record that the reports were filed late.

APPEARANCES: L. M. Rohleder, Vice President, Linmar Petroleum Company, Denver, Colorado, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service. 1/

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Linmar Petroleum Company (Linmar) has appealed from an August 9, 1990, decision of the Deputy to the Assistant Secretary - Indian Affairs (Operations) (hereinafter referred to as Deputy), BIA, denying its appeal of a $1,880 assessment levied by the Royalty Management Program (RMP), MMS, for late reporting of royalties on Form MMS-2014 (Report of Sales and Royalty Remittance) for certain onshore Indian oil and gas leases. 2/

By letter and bill for collection dated February 9, 1990, MMS assessed Linmar $1,880 for late reporting of royalties on Form MMS-2014. MMS explained that the reports were due by the end of the month following the production month; the regulations authorized an assessment of $10 per day for each report not received by the due date; and a report was defined as each line item on a Form MMS-2014. MMS stated that Linmar's reports, which were due no later than November 30, 1989, had been received by MMS on December 1, 1989, and had contained 188 lines, resulting in an assessment of $1,880.

Linmar appealed the assessment, asserting that it had timely mailed the reports and suggesting that either the U.S. Postal Service had failed to deliver the reports timely or MMS had failed to stamp them in properly. Linmar also argued that MMS had not been damaged by the delivery of the reports on December 1, 1989, because the full royalty had been timely paid via electronic wire transfer; its tribal leases did not require the reports to be filed within the month following the production month; the imposition of the assessment effectively increased the royalty rate by 2.11 percent per day in violation of the terms of its leases, and was so excessive as to be unconstitutional; and the Northern Ute Tribe (Tribe) had elected to take its gas royalty in-kind (although the Tribe had failed to follow through in marketing the gas), and this election eliminated the need for filing a Form MMS-2014.

In his August 9, 1990, decision, the Deputy denied Linmar's appeal, finding that Linmar's reports were due on November 30, 1989, but were not received until December 1, 1989. He rejected Linmar's argument that because the reports were mailed in a timely manner, it was not delinquent in filing them, noting that a report is filed when it is received by MMS, not

1/ Counsel state that they represent the Minerals Management Service (MMS); however, the appealed decision, which they are defending, is that of the Bureau of Indian Affairs (BIA). See Asarco, Inc., 116 IBLA 120, 121 n.1 (1990).
2/ According to a field report dated May 3, 1990, the leases reported on the late Forms MMS-2014 were either Northern Ute tribal leases or Uintah and Ouray Agency (allotted) leases.

when it is deposited in the mail. He further stated that Linmar chose the means of delivery of its reports and, thus, bore the consequences of delay by that method. The Deputy discussed the presumption that administrative officials have properly discharged their duties and have not lost or misplaced legally significant documents submitted for filing, and determined that the evidence in this case, which consisted solely of Linmar's statement that it had timely mailed the reports, did not rebut that presumption.

The Deputy concluded that assessments for late reporting were not civil penalties authorized by section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (1988). He characterized civil penalties as weighty sanctions ranging up to $25,000 per day devised to deter lessees from violating applicable statutes, regulations, orders, and lease terms, as distinguished from late reporting assessments which were simply nominal charges in the nature of liquidated damages designed to reimburse MMS for the expenses caused by the late reporting. Accordingly, the Deputy found that the challenged assessments were not penalties and did not represent an increase in the effective royalty rate for the leases.

The Deputy determined that although the Northern Ute tribal lease form did not specifically address the due date for monthly royalty reports, it did require the lessee to abide by the regulations in 30 CFR, including those requiring the filing of Form MMS-2014 by the end of the month following the production month. He rejected Linmar's assertion that the assessments were unreasonable and excessive because MMS was not damaged by the delay in delivery, citing an RMP analysis which indicated that average processing costs for late reports exceeded $10 per line. As far as Linmar's assertion that the Tribe had elected to take its gas royalty in-kind was concerned, the Deputy stated that the MMS Fiscal Accounting Division had determined that none of the subject reports involved royalty-in-kind. In any event, the Deputy found that current MMS policy, effective when these reports were due, required the reporting of all royalty taken in-kind, and that, therefore, even if the reports had involved royalty-in-kind, Linmar would have been required to file the reports no later than November 30, 1989.

The Deputy discussed the need for strict enforcement of reporting requirements. He explained that the information contained on the forms is necessary "to ensure that lease accounts are maintained in accordance with lease terms and regulatory requirements, that reported operations and royalty liability reflect actual conditions on the lease, and that timely payment is made to Indian lessors and to the States" (Decision at 5), and that late reports disrupt computerized data collection activities, increasing administrative costs. He further stated that "[l]ate reporting may also impair MMS's capacity to provide States and the Bureau of Indian Affairs with Explanation of Payment reports within the timeframe specified in 30 CFR 219.104." Id. Accordingly, he determined that RMP had correctly assessed Linmar $1,880 for late reporting and denied its appeal.

On appeal, Linmar concedes that mailing a document does not constitute filing; it questions, however, the fairness of assessing a penalty for the

failure of a delivery method which has worked satisfactorily in the past, emphasizing that it timely pays the royalties due and that it prepares its royalty reports as expeditiously as possible once it receives the necessary data. Linmar challenges the Deputy's conclusion that the assessment is not a penalty, arguing that the $1,880 charge is a weighty sanction which significantly deters the late filing of reports. Linmar claims that it has been told by MMS that processing of royalty reports is delayed for 30 to 90 days to minimize correction costs, and contends that since the assessment does not represent the actual costs incurred by MMS due to the late filing, the assessment is, in fact, a royalty rate increase prohibited by its leases. Finally, Linmar repeats that the leases are subject to royalty-in-kind because the Tribe elected to receive its royalty gas in-kind, and that although it does report its production royalties, royalty taken in-kind need not be reported.

In its answer MMS asserts that the assessment for the late filing of royalty reports on Form MMS-2014 is fully supported by the regulations and Board precedent. It disputes Linmar's assertion that MMS delays the processing of royalty reports, arguing that Linmar has presented no evidence to support that assertion and that, in any event, the statement is totally false. MMS contends that it immediately processes the reports so that the money it receives can be transferred to BIA the day after the report is received and notes that if it delayed processing the reports, it would be unable to meet its payment and reporting responsibilities and would be subject to interest payments.

MMS counters Linmar's contention that no reports are necessary because the Tribe elected to receive its gas royalty in-kind by averring that it has no knowledge of any royalty-in-kind arrangements for any of its leases. MMS additionally argues that Linmar's Forms MMS-2014 indicate that Linmar paid the royalties to MMS via an electronic funds transfer, not that Linmar paid the royalties in-kind. Finally, MMS contends that the regulations require the reporting of royalties taken in-kind, as well as royalties paid in value.

[1] The regulations provide that a completed Form MMS-2014 must accompany all royalty payments to MMS, and that completed Forms MMS-2014, including those reflecting payments by electronic funds transfer, are due by the end of the month following the production month. 30 CFR 210.52. The provisions of 30 CFR 218.40(a) authorize the assessment of an amount not to exceed $10 per day for each report not received by MMS by the designated due date. Procedures for establishing the assessment amount are set out in 30 CFR 218.40(e). Pursuant to that regulation, MMS established a $10 per month assessment under 30 CFR 218.40(a) for late reports. 52 FR 27593 (July 22, 1987). 3/ The regulations further define a report "as each line item on a Form MMS-2014." 30 CFR 218.40(c).

3/ MMS revised the assessment rates applicable to reports received on or after Jan. 1, 1990, but did not change the $10 per month rate for late reports on Form MMS-2014.

This Board has consistently held that late reporting assessments levied pursuant to 30 CFR 218.40 are properly distinguished from civil penalties authorized by FOGRMA because the assessments are not designed to punish and deter violations, but are in the nature of liquidated damages imposed to compensate MMS for the costs incurred as a result of the late reports. See ANR Production Co., 118 IBLA 338, 342 (1991); Phillips Petroleum Co., 116 IBLA 152, 156 (1990); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 248 (1990). Late reporting of royalty payments impairs MMS' ability to meet its own management and reporting requirements, including its obligations under 30 U.S.C. § 1714 (1988) to timely disburse royalty funds to Indian lessors, and under 30 U.S.C. § 1715(a) (1988) to provide timely explanations of those payments to the Indian tribes. See also 30 CFR 219.103 and 219.104. Linmar's unsubstantiated assertions to the contrary notwithstanding, we find that noncompliance with reporting requirements directly results in added costs and expenses to MMS (see ANR Production Co., supra at 343), and conclude that the late reporting assessment does not represent a prohibited increase in the royalty rate established by Linmar's leases.

[2] Linmar concedes that its reports were not received by MMS by their due date, 4/ but asserts that the late delivery was the fault of the Postal Service. The Board has consistently held that one choosing the means of delivery of a document must accept the responsibility for and bear the consequences of delay or nondelivery. See Conoco, Inc. (On Reconsideration), supra at 249, and cases cited therein. In this case, it is not clear that the Postal Service, in fact, delayed delivery. What is clear is that the reports were not received timely by MMS. Linmar must bear the consequences of the late filing.

[3] We also reject Linmar's argument that no royalty reports were required to be filed because the Tribe elected to take its gas royalty in-kind. Linmar admits that the Tribe never finalized plans to take delivery of the royalty gas and that Linmar has been paying royalty in value, not in-kind. See Linmar's Feb. 14, 1990, Appeal Letter at 2. According to Linmar's Forms MMS-2014, it has been paying royalty via electronic funds transfer. The provisions of 30 CFR 210.52 clearly state that "[c]ompleted Form MMS-2014's (or magnetic tape) for royalty payments including those covering payments by electronic funds transfer, are due by the end of the month following the production month." (Emphasis added.) Therefore, Linmar was required to file timely Forms MMS-2014 for its royalty payments, and MMS properly assessed Linmar $1,880 for the late filing of 188 reports.

4/ Although the dates stamped on the copies of Linmar's Forms MMS-2014 attached to MMS' answer are not completely legible, they clearly indicate that the forms were received in December.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge